

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2227 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

HARSHADBHAI D JADAVA

Versus

STATE OF GUJARAT

Appearance:

MR PH PATHAK for Petitioner

MR VM PANCHOLI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/08/1999

ORAL JUDGEMENT

In this petition under Articles 226 of the Constitution, the petitioner, who is working as a lascar under respondent No. 2 has prayed for a writ of mandamus or any other appropriate writ, order or direction for declaring the artificial breaks in the services of the petitioner as arbitrary and violative of Articles 14 and 16 of the Constitution and for directing the respondents to consider the services of the petitioner as continuous services and grant all the benefits available to the

regular employees of the department. Various grounds are urged in the memo of the petition and so also various decisions of the Apex Court are invoked. Suffice it to state that the petitioner has contended that the petitioner's juniors Top Bahadur Thapa and Mohanbhai Shrimali got the benefit of regularization of their services and that the petitioner's case was not considered when the said employees' services were regularized. The learned counsel for the petitioner has relied upon the order No. 5418/NCC-Civ dated 27.1.1989 passed by the Deputy Director General, NCC Gujarat, appointing Top Bahadur Thapa as a lascar in 5 Gujarat BN NCC Surat.

2. The petition is resisted by the affidavit in reply filed by Major BR Sabharwal, Administrative Officer, 9 Gujarat BN CC, Ahmedabad. It is contended that the petitioner was not regularly appointed. Therefore, the petitioner has no right to claim regularization. As regards the averment about regularization of juniors, the following statement is made in the reply affidavit :-

"I do not admit that the Juniors to the petitioner who have approached this Hon'ble Court, their services are regularized. I say and submit that the case of Topbahadur Thapa and Mohanbhai Shrimali is different case from the petitioner and the petitioner (can) not claim benefit on the same as offer(ed) to them."

The deponent of the affidavit has, however, not elaborated as to how the petitioner's case differs from the case of the above named employees. It has been the specific case of the petitioner right from the beginning that the aforesaid two employees were junior to the petitioner. That averment is also not controverted. In the rejoinder affidavit the petitioner has also stated that the respondents have regularized the services of as many as about 39 employees without calling for the names from the Employment Exchange. The petitioner belongs to a Scheduled Caste and in the year 1987, the respondents had called for the names from the Social Welfare Department and the petitioner's name was also sponsored at Sr.No. 9. It is, therefore, submitted on behalf of the petitioner that the petitioner is also entitled to be regularized like Top Bahadur Thapa and Mohanbhai Shrimali.

3. In the facts and circumstances of the case and in

view of the fact that the petitioner was appointed as a Lascar (Peon) with effect from 3.4.1984 and that the petitioner belongs to a Scheduled Caste and his name was sponsored by the Social Welfare Department in the year 1987 and the uncontroverted fact that during pendency of the petition, 39 more junior employees similarly situate as the petitioner have got the benefit of regularization of their services, there could possibly be no ground to deny the petitioner the same benefits. Otherwise, the inaction of the respondents in not regularizing the petitioner's services would be arbitrary.

4. In the result, the petition is allowed. The respondents are directed to grant the petitioner the benefit of regularization of services with effect from the date on which the services of his immediate juniors were regularized and to give the petitioner all the benefits of seniority and pay fixation on that basis, though the Court refrains from passing any order for paying the petitioner any arrears of difference of salary on that basis. The petitioner will, of course, have to be paid salary and allowances on the aforesaid basis atleast from today.

Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

August 2, 1999 (M.S. Shah, J.)

sundar/-